

TITLE 15. BOARD OF PRISON TERMS

NOTICE OF PROPOSED REGULATORY ACTION RN 04-04

SUBJECT: *POSTPONEMENTS, CONTINUANCES AND STIPULATIONS OF
UNSUITABILITY*

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend Title 15 (Division 2), California Code of Regulations (CCR) section (§) 2253.

AUTHORITY

These regulations are submitted pursuant to the Board's authority under Penal Code (PC) §§ 3052 and 5076.2.

REFERENCE

These regulations are amended to implement, interpret, and/or make specific, PC §§ 1170.2 and 3041.5.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will close at 5:00 p.m., on August 31, 2004.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile No.: (916) 322-3475
E-mail: regcomment@bpt.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public, a compendium of its rules and regulations.

Pursuant to PC § 3041, one year prior to the inmate's minimum eligible parole release date a panel of the Board of Prison Terms (Board) shall meet with the inmate to determine whether a parole date will be set. . . . "The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates."

The Board shall hear each case annually thereafter, unless for specific reasons that shall be stated on the record, it is found that the prisoner would not reasonably be expected to have parole granted during the following years. In this instance, a prisoner's case may not be reheard for up to five years. (PC § 3041.5(2)(A)-(B).)

Currently, CCR § 2253 allows prisoners to request a continuance of their hearing on any ground, including that he or she had insufficient time to prepare for the hearing. Such request is to be submitted in writing, before the hearing, to department staff who will decide whether to grant the continuance. A request during the hearing shall be made to the hearing panel who shall decide whether to grant the continuance. Any request and reasons for continuances shall be documented. Requests for continuances may be granted for good cause. Continuances should not be granted when the prisoner is challenging his case in court, unless the court has specifically restrained further proceedings.

Proposed amendments to CCR § 2253 will *delete* current language, redefine the request for continuances and add two additional methods in which parolees and prisoners may request delays of their hearings. In addition, Penal Code § 3052 has been added as an authority reference citation under the "Note" section.

The first method for delaying a life prisoner hearing would be for the prisoner to submit a request for a ***postponement*** at the earliest date in which the prisoner becomes aware of the need for a delay. Such request may be granted for good cause as set forth in proposed CCR § 2253(b).

Pursuant to proposed CCR § 2253(c), a prisoner or parolee may request a ***continuance*** of any hearing for good cause. Such request would be made after the commencement of the hearing for reasons that were unknown or reasonably could not have been known prior to hearing. The Board shall weigh the need for the request and any inconvenience to parties present at the hearing.

Proposed CCR § 2253(d), will codify the current process in which life prisoners may *stipulate* to being unsuitable for parole at or before the hearing except at the Initial Parole Hearing. Such offers shall be considered by the Board as early as possible. If the offer to stipulate is submitted within 10 days of the hearing date, the Board will make a reasonable effort to vacate the hearing and have the affected parties notified. If the hearing date cannot be vacated in sufficient time, the offer to stipulate will be considered at the time of the hearing.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendment to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS THE TEXT OF PROPOSED REGULATIONS, AND THE RULEMAILING FILE

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations on the Board's Internet Home Page at: www.bpt.ca.gov. Review of the rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public during office hours via the Board contact person indicated below. The cost of copies is \$ 0.34 per page, plus postage. The statement of reasons and proposed text are also available for review at prison law libraries.

CONTACT PERSON

Please direct requests for review or copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
(916) 445-5277

In any such inquiries, please identify the action by using the **Board's regulation control number RN 04-04**.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Denise Schmidt, 323-0944**.

Questions on the substance of the proposed regulatory action may be directed to: **Marc Remis, 322-6729**.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following the preparation of the final statement of reasons, it will be available on the Board's Internet Home Page at: www.bpt.ca.gov. It may also be obtained from the Board contact person at a cost of \$.34 per page, plus postage.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Any modified regulation text will be posted on the Board's Internet Home Page at: www.bpt.ca.gov. Copies may also be obtained from the contact person indicated in this notice at a cost of \$.34 per page, plus postage. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.